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10/725,071	12/01/2003	Peter J. Myers	20014/38779-A	2761
34431	7590	04/04/2005	EXAMINER	
HANLEY, FLIGHT & ZIMMERMAN, LLC 20 N. WACKER DRIVE SUITE 4220 CHICAGO, IL 60606			CONLEY, FREDRICK C	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/725,071

Applicant(s)

MYERS ET AL.

Examiner

FREDRICK C CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 and 36-45 is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-30 and 35 is/are rejected.
- 7) ☒ Claim(s) 8-11 and 31-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
  - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/18/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

***Information Disclosure Statement***

The information disclosure statement filed 1/18/05 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the Applicant fails to provide publisher or publication dates for references C01 and C02 "Bobby 5-in-1" and "Gymini Deluxe-Black Whit red". It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Des. Pat. No. 359,869 to Oren.

Claim 1, Oren discloses an apparatus comprising:

a floor mat;

a play gym to suspend an object above the mat; and

at least one connector to couple the play gym to the mat (fig. 1-2). In response to applicant's recitation "dimensioned to be positioned within at least one of a play yard and a bassinet", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claims 2-3, wherein the at least one connector couples the play gym to the mat.

Claim 4, wherein the at least one connector directly couples the play gym to the mat.

Claim 17, wherein the play gym comprises at least one leg defining an arch.

Claim 18, wherein the at least one connector is located in a top surface of the mat.

Claim 19, wherein the at least one connector is located within a perimeter of the mat and is not pivotably coupled to the mat.

Claims 1-5, 12, 16-22, 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,930,854 to O'Neill et al.

Claim 1, O'Neill discloses an apparatus comprising:

a floor mat 12;

a play gym 6 to suspend an object above the mat; and

at least one connector 16 to couple the play gym to the mat. In response to applicant's recitation "dimensioned to be positioned within at least one of a play yard and a bassinet", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claims 2-3, wherein the at least one connector 16 couples the play gym to the mat.

Claim 4, wherein the at least one connector 16 directly couples the play gym to the mat.

Claim 5, wherein the at least one connector comprises a plurality of connectors 16, and the play gym comprises: a hub 20; and at least two legs, each of the legs having a first

Art Unit: 3673

end coupled to the hub and a second end dimensioned to be removably coupled to a respective one of the connectors.

Claim 12, O'Neill is silent to the legs being flexible, but it would have been obvious to merely construct the legs from a flexible material in order to easily assembly the apparatus of O'Neill.

Claim 16, wherein at least one of the connectors defines a slot to receive the second end of a leg of the play gym. A slot is interpreted as a narrow opening defined within the connector 16 of O'Neill.

Claim 17, wherein the play gym comprises at least one leg defining an arch.

Claim 18, wherein the at least one connector is located in a top surface of the mat.

Claim 19, wherein the at least one connector is located within a perimeter of the mat and is not pivotably coupled to the mat.

Claim 20, an apparatus comprising:

a mat 12

a plurality of connectors 16 coupled to the mat capable of being folded in a first position within a perimeter of the mat and a second unfolded position outside the perimeter of the mat; and

a play gym 6 to be removably coupled to the connectors to suspend an object above the mat.

Claim 21, wherein the mat comprises a padded base 14. A board is defined as a flat piece of material thus the base of O'Neill meets the Applicant's claimed limitation.

Art Unit: 3673

Claim 22, wherein the loop connectors 16 are pivotal about a vertical axis that is coupled to the mat.

Claim 27, O'Neill discloses a floor board;

a mat 12; and

a connector 16 coupled to the mat capable of being folded into a first position within a perimeter of the mat and a second unfolded position outside the perimeter of the mat.

In response to applicant's recitation "for a play yard or bassinet", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 28, wherein the connector is capable of being folded beneath a top surface of the mat when the connector is in the first position.

Claim 29, O'Neill discloses a play gym comprising:

a hub 20; and

at least two legs 6, each of the legs having a first end coupled to

the hub and a second end dimensioned to be removably coupled to a play yard 8, and

a floor mat 14 separate from a bassinet 12 and the play yard. A play yard is defined as a portable enclosure in which a baby can be left to play and a bassinet is defined as a

basket like bed. Therefore, the Examiner is interpreting the ring and cover of O'Neill as a play yard and bassinet.

Claims 1-4 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 2,475,515 to Potter.

Claim 1, Potter discloses an apparatus comprising:

a floor mat (12,13);

arched supporting members/play gym 20; and

at least one connector 21 to couple the arched supporting members and mat. In response to applicant's recitation "to suspend an object above the mat" and "dimensioned to be positioned within at least one of a play yard and a bassinet", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claims 2-3, wherein the at least one connector 21 couples the arched support members to the mat.

Claim 4, wherein the at least one connector 21 directly couples the arched support member to the mat.



Art Unit: 3673

Claim 17, wherein the play gym comprises at least one leg defining an arch.

Claim 18, wherein the at least one connector is located in a top surface of the mat.

Claim 19, wherein the at least one connector is located within a perimeter of the mat and is not pivotably coupled to the mat.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,475,515 to Potter in view of U.S. Pat. No. 4,750,509 to Kim.

Claim 5, Potter discloses all of the Applicant's claimed limitations except for the arched support members comprising a hub. Kim discloses an assembly having arched support members connected to a hub 1 and at least two legs 3 each having a first end coupled to the hub. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a hub as taught by Kim in order to facilitate the rapid and easy setup or taking down of the assembly of Potter.

Claim 6, wherein the at least two legs are pivotably coupled to the hub (col. 2 lines 55-60)(Kim).

Claim 7 wherein the hub defines a first plurality of cavities 6 and a second plurality of cavities 7, wherein each of the at least two legs is pivotable between a first position in

which the first end is disposed within a respective one of the first cavities 6 and a second position in which the first end is disposed within a respective one of the second cavities 7 (fig. 4).

Claim 12, wherein the at least two legs are flexible (col. 2-3 lines 66-68 and 1-3).

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Des. Pat. No. 359,869 to Oren in view of U.S. Pat. No. 6,301,731 to Jakubowski et al.

Claim 13, Oren discloses all of the Applicant's claimed limitations except for having a play yard. Jakubowski discloses a mat 36 attached to a play yard including connectors 38. It would have been obvious to one having ordinary skill in the art at the time of the invention to attach the mat of Oren to a play yard as taught by Jakubowski such that the play gym suspends the object above the play yard in order to promote physical or mental activities within a play area when a parent is not directly attending the infant.

Claim 14 wherein the connectors comprise pockets to receive ends of the play gym (fig. 1-2).

Claim 15. Oren fails to disclose the pockets of the mat made from fabric. It is well known to construct mats from fabric and it would have been obvious to one having ordinary skill in the art at the time of the invention to employ a fabric material in order to construct a mat to support an infant.

Claims 20-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,301,731 to Jakubowski et al. in view of U.S. Des. Pat. No. 5,930,854 to O'Neill et al.

Claims 20, 24, and 26, Jakubowski discloses an apparatus comprising a floor mat 36 of at least one of a play yard, the floor mat being removable from the play yard. Jakubowski fails to disclose a play gym. O'Neill discloses a mat 12 having a play gym 6 removably secured to the floor mat. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a play gym as taught by O'Neill to suspend an object above the mat of Jakubowski in order to encourage the infant to look up and reach out.

Claim 21, wherein the mat 36 provides a padded surface for the floor/board 16.

Claim 22, wherein the connectors 38 are pivotally coupled to the mat 36.

Claim 23, wherein when the connectors 38 are placed in the first position, the mat is positionable within the play yard as a floor.

Claims 30 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,930,854 to O'Neill in view of U.S. Pat. No. 4,750,509 to Kim.

Claim 30, O'Neill discloses all of the Applicant's claimed limitations except for the hub defining a first plurality of cavities and a second plurality of cavities. Kim discloses an assembly having a hub with a first plurality of cavities 6 and a second plurality of cavities 7, wherein each of the at least two legs is pivotable between a first position in

Art Unit: 3673

which the first end is disposed within a respective one of the first cavities 6 and a second position in which the first end is disposed within a respective one of the second cavities 7 (fig. 4). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a hub as taught by Kim in order to facilitate the rapid and easy setup or taking down of the assembly of O'Neill.

Claim 35, O'Neill is silent to the legs being flexible, but it would have been obvious to merely construct the legs from a flexible material in order to easily assembly the apparatus of O'Neill.

***Allowable Subject Matter***

Claims 25 and 36-45 are allowed.

Claims 8-11 and 31-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 703-308-7468. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC  


  
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